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FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6859

COMPLAINT FILED: July 31, 2014

DATE OF NOTIFICATION: August 6, 2014

LAST RESPONSE: September 29, 2014

ACTIVATED: November 7, 2014

ELECTION CYCLE: 2014

Earliest SOL: July 24, 2019

COMPLAINANT:

Jeff Timmer

RESPONDENTS:

John Moolenaar

Moolenaar for Congress and Gwen D. Lang in her
official capacity as treasurer

Friends of John Moolenaar and Gwen D. Lang in
her official capacity as treasurer

Value for Michigan and John P. Yob in his official
capacity as treasurer

Strategic National Campaign Management LLC

John P. Yob

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30104(b)

52 U.S.C. § 30125(e)(1)(A)

11 C.F.R. § 110.3(d)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The complaint alleges that Michigan State Senator and Congressional candidate John Moolenaar violated the Federal Election Campaign Act of 1971, as amended (the "Act"),¹ and Commission regulations by using funds from his state campaign committee, Friends of John

¹ On September 1, 2014, the Act was transferred from Title 2 to Title 52 of the United State Code.

1 Moolenaar ("State Committee"), to pay for consulting services performed on behalf of his
2 federal campaign committee, Moolenaar for Congress (the "Federal Committee"), during the
3 2014 primary election period.² Specifically, Complainant asserts that the State Committee
4 indirectly paid for the services of Federal Committee vendor Strategic National Campaign
5 Management LLC ("Strategic National") when it donated \$98,000 to Value for Michigan
6 ("VFM"), a state political action committee controlled by Strategic National's principal, John P.
7 Yob.³ The Complaint further alleges that the Federal Committee has "run afoul of the FEC's
8 reporting requirements" since the Federal Committee failed to report payments to, or in-kind
9 contributions from, Strategic National.⁴ In a joint response, Respondents deny the allegation that
10 the State Committee funds were used to pay for services provided to the Federal Committee and
11 request that the Commission take no action in the matter.⁵

12 As discussed below, we recommend that the Commission find no reason to believe that
13 Respondents violated the Act or Commission regulations in connection with these allegations,
14 and close the file.

15 II. FACTUAL AND LEGAL ANALYSIS

16 A. Facts

17 John Moolenaar was a 2014 candidate for Congress in Michigan's 4th Congressional
18 district and Moolenaar for Congress is his authorized federal campaign committee.⁶ At the time

² Compl. at 1-3. See 52 U.S.C. § 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(c)(1)(A)); 11 C.F.R. § 1103(d).

³ *Id.* at 1-2. See 52 U.S.C. § 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A)); 11 C.F.R. § 1103(d).

⁴ *Id.* at 2. See 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)).

⁵ Resp. at 1-3 (Sept. 29, 2014).

⁶ See FEC Form 1 (Statement of Organization) (Apr. 14, 2014); FEC Form 2 (Statement of Candidacy) (Apr. 14, 2014). Moolenaar won the Republican primary election on August 5, 2014, and the general election on

1 of his candidacy, Moolenaar was a sitting Michigan state senator and Friends of John Moolenaar
2 was his authorized state committee.⁷ Gwen D. Lang is treasurer of both committees.

3 During the 2014 Congressional election, the Federal Committee hired Strategic National
4 Campaign Management LLC as a vendor to provide political consulting and direct mail services.
5 The Federal Committee disbursed a total of \$4,400 to Strategic National and incurred debts with
6 Strategic National totaling \$99,511.75.⁸ John P. Yob is the chief executive officer and registered
7 agent of Strategic National.⁹ Yob is also the treasurer of VFM,¹⁰ a state political action
8 committee that registered with the Michigan State Bureau of Elections as an Independent

November 4, 2014. *See* Michigan Department of State, 2014 Official Michigan Primary Election Results for 4th Congressional District at <http://miboecfr.nictusa.com/election/results/14PRI/06004000.html>; 2014 Official Michigan General Election Results at <http://miboecfr.nictusa.com/election/results/14GEN/06004000.html>.

⁷ Moolenaar did not seek re-election to the state senate in 2014 and his term ended on December 31, 2014. *See* Declaration of John Moolenaar ¶ 4 (Sept. 29, 2014). The State Committee was officially dissolved in February of 2015. *See* The State Committee: 2015 Annual CS; Letter from Amy Lovegrave, Analyst, Disclosure Division, Michigan Bureau of Elections to Friends of John Moolenaar (Feb. 17, 2015).

⁸ *See* Moolenaar for Congress 2014 October Quarterly Report and 2014 Amended October Quarterly Report.

⁹ *See* Strategic National Campaign Management, LLC, Articles of Organization, Michigan Department of Labor and Economic Growth, Bureau of Commercial Services (Mar. 23, 2009). Yob is also the principal of four other consulting companies that provided a variety of services to the Federal Committee during the 2014 election including, yard signs, data lists, phone calls to voters, endorsement calls, telephone town hall, polling, and support messaging: E-Design Company, Victory Processing, LLC ("Victory Processing"), Victory Phones, LLC ("Victory Phones"), and Victory Phones Live, LLC ("Victory Live"). State filings indicate that Yob is the chief executive officer for Victory Processing, Victory Phones and Victory Live. *See* Articles of Organization, Michigan Department of Labor and Economic Growth, Bureau of Commercial Services (July 13, 2012; Nov. 7, 2012; Feb. 21, 2012). *See also* Resp. at 3. The Federal Committee disbursed approximately \$52,601.84 to the five companies operated by Yob during the primary and general elections. *See* Moolenaar for Congress: 2014 July Quarterly Report; 2014 Pre-Primary Report; 2014 Amended October Quarterly Report; 2014 October Quarterly Report; 2014 Pre-General Report; 2014 Post-General Report.

¹⁰ It appears that VFM operates out of the same address as Strategic National, Victory Processing and Victory Phones – 190 Monroe Avenue NW, Suite 500, Grand Rapids, MI.

Committee on February 24, 2011.¹¹

On July 24, 2014, the State Committee donated \$98,000 to VFM for the purpose of transferring "excess funds."¹² This donation exhausted most of the State Committee's remaining cash on hand of \$104,554.95, and the donation was the largest single donation ever received by VFM.¹³ In fact, VFM disclosed relatively little activity from its inception in 2011 until it received the State Committee's \$98,000 donation. In contrast, between July 25, 2014, and September 23, 2014, after receiving the State Committee's donation, VFM donated \$52,000 to eleven state-level candidates and one candidate for the Board of Regents of the University of Michigan.¹⁴ Then, between October 21, 2014, and November 20, 2014, VFM donated all but \$500 of the remaining funds to twelve state-level candidates and the same candidate for the University of Michigan Board of Regents.¹⁵

Complainant alleges that the purpose of the State Committee's \$98,000 donation to VFM was to compensate Strategic National for services it performed for the Federal Committee.¹⁶ The

¹¹ In Michigan, an "Independent Committee" is formed to support one or more candidates and may also support or oppose ballot questions. An Independent Committee may not accept contributions from corporations, joint stock companies, labor organizations, domestic dependent sovereigns, from persons holding an interest in one of the three casinos located in Detroit or from foreign nationals. In certain circumstances, an Independent Committee may give candidate committees ten times the amount a political action committee or individual may donate to the candidate. *See Candidate Committee Manual*, Michigan Department of State Bureau of Elections, App. H. (Committee Types), available at http://www.michigan.gov/documents/APPENDIX_H_157777_7.pdf. VFM is not registered with the Commission as a political committee.

¹² *See* Friends of John Moolenaar 2014 October Quarterly Campaign Statement; Value for Michigan Late Contribution Report (July 25, 2014).

¹³ On August 24, 2014, the State Committee donated \$1,600 to the Moolenaar Leadership Fund for the same purpose and ended the reporting period with a balance of \$2,472.04. *See* Friends of John Moolenaar 2014 October Quarterly Campaign Statement.

¹⁴ Value for Michigan 2014 Amended October Quarterly Campaign Statement.

¹⁵ Value for Michigan 2015 February Quarterly Campaign Statement.

¹⁶ Compl. at 1-2.

1 complaint provides a copy of a strategy memo dated July 21, 2014, that Strategic National
2 purportedly prepared for the Federal Committee, and asserts that the Federal Committee reported
3 no disbursements to Strategic National on the 2014 July or Pre-Primary Reports covering that
4 time period.¹⁷ The complaint notes that Strategic National prepared this strategy memorandum
5 just before the State Committee donated \$98,000 to VFM, and concludes that Moolenaar used
6 VFM as an intermediary to funnel state funds to a company providing services to his federal
7 campaign, which constitutes a "clear" violation of 11 C.F.R. § 110.3(d) and resulted in the State
8 Committee subsidizing the Federal Committee with impermissible funds.¹⁸

9 In a joint response, Respondents deny the allegations that they violated the Act and
10 Commission regulations by transferring funds from the State Committee to VFM and assert that
11 the complaint "has no merit."¹⁹ Respondents assert that the transfer is allowed under a Michigan
12 law requiring terminating candidate committees (such as the State Committee) to disburse its
13 unexpended funds.²⁰ According to the Michigan state statute cited in the response, "upon
14 termination of a candidate committee," unexpended funds of that candidate committee not
15 eligible to be transferred to another candidate committee of that candidate may be "given to an

¹⁷ *Id.* at 2, Ex. C. The memorandum details the Federal Committee's district-wide advertising strategy, discusses the campaign's internal tracking of voter support, and concludes that the race between Moolenaar and Mitchell was "very close" with the results to be determined by turnout and the continuous support by outside groups. *Id.*, Ex. C. The State Committee's donation was made on July 24, 2014. See Friends of John Moolenaar 2014 October Quarterly Campaign Statement; Value for Michigan Late Contribution Report, dated July 25, 2014

¹⁸ Compl. at 2. Complainant also posits that this scheme may have involved an explicit agreement whereby Yob and Strategic National would not charge the Federal Committee for consulting services if, at the conclusion of the primary campaign, Moolenaar donated the remaining funds in this state campaign account to VFM. *Id.* Moolenaar donated the vast majority (but not all) of his state campaign funds to VFM but did so in advance of, and not after, the primary election. Friends of John Moolenaar 2014 Amended October Quarterly Report.

¹⁹ Resp. at 1-2.

²⁰ *Id.* at 2.

1 independent committee.”²¹ The response also acknowledges that VFM, as a state registered
2 independent committee, is prohibited by Michigan law from paying Yob, or anyone else, for
3 services provided to a federal campaign.²²

4 The response includes declarations signed by Moolenaar and Yob in which they
5 specifically deny engaging in a scheme to pay Yob for services performed on behalf of the
6 Federal Committee with non-federal Funds donated to VFM. Moolenaar states in his declaration
7 that the \$98,000 contribution to VFM was done in connection with dissolving his state
8 committee and that he understood that the funds would be used to make contributions to state
9 candidates consistent with the Michigan law.²³ Further, Moolenaar avers that there was “no
10 agreement with any person that the \$98,000 contribution to VFM would be used to pay Yob or
11 any of his companies” for services rendered to the Federal Committee.²⁴

12 Like Moolenaar, Yob explicitly states in his declaration that he had “no agreement with
13 Senator Moolenaar or any other person” that the \$98,000 would be used to pay him or any of his
14 companies for services rendered to the Federal Committee.²⁵ According to Yob, he intended to
15 use the funds to make contributions and expenditures in accordance with Michigan law.²⁶

²¹ See Michigan Campaign Finance Act § 169.245(45)(1) and (2)(f) (“MCL”). To be eligible for dissolution, candidate committees must have no assets or outstanding debts. See *Candidate Committee Manual*, Michigan Department of State Bureau of Elections, App. W (Dissolution of a Committee), available at http://www.michigan.gov/documents/APPENDIX_H_157777_7.pdf.

²² Resp. at 2. See MCL 169.205(4). In addition, the response states that Moolenaar transferred the funds to VFM and not Yob, emphasizing that VFM cannot be deemed the “alter ego” of Yob simply by virtue of his position as treasurer of VFM. Resp. at 2.

²³ Resp. at 2; Moolenaar Decl. ¶¶ 7, 8.

²⁴ Moolenaar Decl. ¶ 9.

²⁵ Declaration of John P. Yob ¶ 5 (Sept. 29, 2014).

²⁶ Yob Decl. ¶ 6.

1 Finally, the response states that Complainant's allegation that the Federal Committee
2 failed to accurately report services performed by Yob and his companies is factually inaccurate.²⁷
3 According to Respondents, the Federal Committee did not disclose payments relating to the
4 services reflected in the July 21 memorandum in its 2014 Pre-Primary Report because that
5 document was created three days after the committee closed its "books" for that reporting
6 period.²⁸ The Federal Committee filed its 2014 Pre-Primary Report, covering activity engaged in
7 between July 1 and July 16, on July 24, 2014.²⁹

8 **B. Legal Analysis**

9 The Complaint alleges that the State Committee's \$98,000 donation to VFM was
10 payment for services that Strategic National provided to Moolenaar's federal campaign by
11 Strategic National. The Act prohibits a federal candidate, a candidate's agent and entities
12 established, financed, maintained or controlled by them from soliciting, receiving, directing,
13 transferring or spending funds in connection with a federal election, unless those funds are
14 subject to the limitations, prohibitions and reporting requirements of the Act.³⁰ The transfer of
15 funds or assets from a candidate's campaign committee or account for a nonfederal election to
16 his or her principal campaign committee or other authorized committee for a federal election is

²⁷ Resp. at 3.

²⁸ *Id.*

²⁹ *Id.* See Moolenaar for Congress 2014 July Quarterly Report and 2014 Pre-Primary Report. Respondents also state that, contrary to Complainant's allegations, the Federal Committee properly reported payments to Yob's other companies during both the 2014 July Quarterly and Pre-Primary reporting periods. Specifically, the Federal Committee disclosed disbursements totaling \$11,188.91 to Victory Phones and \$12,259.12 to E Design Company. According to the response, additional payments to Yob or any of his companies made after July 17, 2014 would be disclosed in subsequent reports. Resp. at 3.

³⁰ 52 U.S.C. § 30125 (formerly 2 U.S.C. § 441i(e)(1)(A)). Michigan law does not permit corporations or unions to make direct contributions to candidate committees. MCL 169.252.

1 prohibited.³¹ Thus, if the State Committee paid for services provided to the Federal Committee,
2 the Federal Committee has received an prohibited in-kind contribution from the State Committee
3 in violation of 52 U.S.C. § 30125 (formerly 2 U.S.C. § 441i(e)(1)(A)).

4 The complaint argues that the timing and amount of the State Committee's donation and
5 the interrelationships between the respondents demonstrates that there was a scheme to use
6 Moolenaar's state campaign funds to benefit his federal candidacy. These circumstantial facts,
7 however, do not appear to be supported by any record evidence showing a connection between
8 the State Committee's donation and the services provided to the Federal Committee by Strategic
9 National. In particular, Moolenaar's and Yob's sworn and detailed declarations specifically deny
10 funneling the State Committee's \$98,000 donation to VFM to pay Yob or Strategic National for
11 consulting services provided to the Federal Committee. Based on the information available, it
12 appears that Moolenaar's actions were intended merely to divest his state candidate committee
13 by donating funds to VFM and are apparently in compliance with state law. Moolenaar did not
14 seek re-election to the state senate in the spring of 2014 and represents that he does not intend to
15 run for state office in the near future.³² The State Committee's donation of "excess funds" to an
16 Independent Committee such as VFM appears consistent with state requirements that terminating
17 candidate committees disperse unexpended campaign funds and with the allowable ways to
18 disperse those funds.³³ In addition, after winning the August 5, 2014, primary election,

³¹ 11 C.F.R. § 110.3(d). *See also* MUR 6267 (Paton For Senate) (Paton's federal committee received prohibited transfer of funds when Paton's state senate committee paid for polling and a survey benefiting his federal campaign); MUR 5646 (Cohen for New Hampshire) (Cohen's federal committee received prohibited transfer of funds when Cohen's state committee paid for start-up expenses related to his U.S. Senate campaign); and MUR 5426 (Dale Schultz for Congress) (Schultz's federal committee received prohibited transfer of funds when the Schultz state committee paid for expenses that the candidate incurred in connection with his federal election).

³² Moolenaar Decl. ¶ 5.

³³ *See* MCL 169.205(4).

1 Moolenaar continued to donate "excess" campaign funds — specifically to his own leadership
2 PAC — and ended the October Quarterly reporting period with an ending balance of \$2,420.04.
3 Finally, most of the State Committee's \$98,000 donation to VFW was, in turn, donated by VFM
4 to twenty-one candidate committees between July 25, 2014, and November 20, 2014.³⁴

5 There is also no support for the claim that the Federal Committee failed to properly report
6 disbursements to Strategic National in the 2014 July Quarterly and 2014 Pre-Primary Reports.
7 There is no evidence that Strategic National began providing services to the Federal Committee
8 prior to July 21, 2014, which is the date of the strategy memorandum prepared by the company
9 for the federal campaign. As discussed *supra* at 7 these particular services had to be disclosed in
10 the Federal Committee's 2014 October Quarterly Report, covering activity between July 17,
11 2014, and September 30, 2014, and not, as the complaint asserted in the earlier 2014 July
12 Quarterly or Pre-Primary Reports.³⁵

13 Given the specificity of the declarations provided by Moolenaar and Yob and the
14 corroborating information outlined above, it appears that Respondents have sufficiently refuted
15 the allegations to warrant a finding that there is no reason to believe that Respondents violated
16 the Act and Commission regulations in connection with the State Committee's donation to VFM
17 and the services performed by Strategic National on behalf of the Federal Committee. Therefore,
18 we recommend that the Commission find that there is no reason to believe that Respondents

³⁴ Value for Michigan 2014 Amended October Quarterly Campaign Statement; 2015 February Quarterly Campaign Statement.

³⁵ Compl. at 2. The Federal Committee reported disbursing \$4,400 to Strategic National for political consulting and incurring debts totaling \$99,511.75 to that firm for the same services. Moolenaar for Congress 2014 October Quarterly Report.

violated 52 U.S.C. §§ 30125(e)(1)(A) and 30104(b) (formerly 2 U.S.C. §§ 441i(e)(1)(A) and 434(b)) or 11 C.F.R. § 110.3(d).


III. RECOMMENDATIONS


1. Find no reason to believe that Friends of John Moolenaar and Gwen D. Lang in her official capacity as treasurer violated 52 U.S.C. § 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A)); and 11 C.F.R. § 110.3(d) by making impermissible transfers to Moolenaar for Congress.
2. Find no reason to believe that Moolenaar for Congress and Gwen D. Lang in her official capacity as treasurer violated 52 U.S.C. § 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A)); and 11 C.F.R. § 110.3(d) by accepting impermissible transfers from Friends of John Moolenaar.
3. Find no reason to believe that Moolenaar for Congress and Gwen D. Lang in her official capacity as treasurer violated 52 U.S.C. § 3104(b) (formerly 2 U.S.C. § 434(b));
4. Find no reason to believe that John Moolenaar violated 52 U.S.C. § 30125(e)(1)(A) and (formerly 2 U.S.C. § 441i(e)(1)(A)); and 11 C.F.R. § 110.3(d).
5. Find no reason to believe that Value for Michigan and John Yob in his official capacity as treasurer violated the Act in connection with the allegations in this matter.
6. Find no reason to believe that John P. Yob violated the Act in connection with the allegations in this matter.
7. Find no reason to believe that Strategic National Campaign Management LLC violated the Act in connection with the allegations in this matter.
8. Approve the attached Factual and Legal Analysis.
9. Approve the appropriate letters.

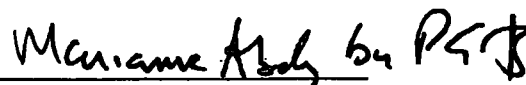
10. Close the file.

Daniel Petalas
Associate General Counsel for Enforcement

3-6-15
Date:


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